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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,270	05/02/2001	Palpu Pushpangadan	056859-0126	6119

22428 7590 09/23/2003

FOLEY AND LARDNER
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WASHINGTON, DC 20007

EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/846,270

Applicant(s)

PUSHPANGADAN ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 71-81, 83-103, 107 and 115-119.

Claim(s) withdrawn from consideration: 82, 104-106 and 108-114.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



SREENI PADMANABHAN
PRIMARY EXAMINER

9/22/03

Continuation of 2. NOTE: Applicant has added claims directed to a process of preparing a composition. Such claims have never been examined..

Continuation of 5. does NOT place the application in condition for allowance because: a) the 35 USC 112 and 103 rejections are maintained for reasons of record in the Office Action mailed 5/6/03, Paper No. 12; b) Applicant argues, "Schult's composition contains essential oils that are useful for treating dermatological diseases and does not contain a herbal colourant, as instantly claimed". This argument is not persuasive, as the combination of references teaches the herbal colourant. The Examiner respectfully points out that a compound (or an extract) and its properties are inseparable. Thus, since Tu teaches the same extract as that of the instant invention, it must contain an herbal colourant. Applicant argues, "It is therefore, evident that Schultz's composition was never intended for cosmetic applications, as taught by the present invention". This argument is not persuasive. First, the Examiner respectfully points out that the preamble has not been afforded patentable weight in the instant invention. Second, it is respectfully pointed out that Schultz is related to cosmetic. The Examiner points out that Webster's Dictionary defines a cosmetic as 1 : of, relating to, or making for beauty especially of the complexion 2 : done or made for the sake of appearance: as a : correcting defects especially of the face 3 : visually appealing. Thus Schultz teaches a cosmetic. Applicant argues, "On the other hand, the claimed composition does not include an artificial ingredient". This argument is not persuasive. The instant claims are directed to compositions "comprising", wherein the term "comprising" is open-ended and does not exclude additional ingredients. Applicant argues, "the combination of the herbal colours and aroma are included in the claimed cosmetic composition especially for lips, eyes and cheeks". This argument is not persuasive, as it is not commensurate in scope with the instant claims.